

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

SEP 15 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Reallocation of Television ) ET Docket No. 97-157  
Channels 60-69, )  
the 746-806 MHz Band )

COMMENTS OF THE  
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")<sup>1</sup> respectfully submits these comments in the above mentioned proceeding.<sup>2</sup> In light of the growing needs of the public safety community and the concomitant growing demand for available spectrum, it is imperative that the Commission allocate additional spectrum for public safety use. At the same time, the Commission should not neglect its responsibilities as a regulatory body to manage the use of the spectrum in an efficient manner which encourages competition and meets marketplace demands. Thus, the

<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

<sup>2</sup> See In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band, Notice of Proposed Rule Making, ET Docket No. 97-157, FCC 97-245 (released July 10, 1997) ("Notice").

Commission must consider the spectrum management policy objectives mandated by Congress<sup>3</sup> when allocating the remaining 36 MHz of spectrum at 746-764 MHz and 776-794 MHz to fixed, mobile, and broadcasting services.

**I. THE COMMISSION SHOULD ALLOCATE ADDITIONAL SPECTRUM FOR PUBLIC SAFETY USE**

As the Commission recognized in the Notice, there is a critical need for more public safety spectrum in the United States.<sup>4</sup> The Public Safety Wireless Advisory Committee ("PSWAC") definitively concluded that more spectrum is required in order to meet the immediate and future needs of the public safety community.<sup>5</sup> Numerous governmental entities have recognized this need.<sup>6</sup>

<sup>3</sup> See 47 U.S.C. § 332(a)(1)-(4).

<sup>4</sup> Notice at ¶ 8.

<sup>5</sup> Final Report of the Public Safety Wireless Advisory Committee, Sept. 11, 1997 ("PSWAC Report"). Specifically, the PSWAC stated that the public safety community needs immediately 2.5 MHz of spectrum and within 5 years approximately 25 MHz of new allocations will be needed. Moreover, over the next 15 years, as much as 70 MHz of spectrum will be required to satisfy the mobile communication needs of the public safety community. PSWAC Report at 3.

<sup>6</sup> See In the Matter of the Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Notice of Proposed Rule Making, 11 FCC Rcd 12460, 12466 (1996) ("In an era characterized by progress, innovation and choice in the telecommunications industry, the communications capability of the nation's public safety agencies remains severely challenged."); Law Enforcement and Public Safety Telecommunications Empowerment Act, S. 255, 105th Cong., 1st Sess., 143 Cong. Rec. S945-05 (1997) ("This legislation addresses a long-standing need by police, fire departments, and emergency medical services for more channels of radio communication.").

CTIA concurs with the conclusion of the PSWAC Report that more spectrum must be allocated to meet public safety needs.<sup>7</sup> The Commission is required to meet certain public interest obligations when allocating and assigning spectrum. In accordance with the objectives it must meet with regard to mobile services spectrum, the Commission must promote the safety of life and property, improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based on marketplace demands, and encourage competition.<sup>8</sup> Based on these considerations, the Commission must allocate and assign spectrum based on need and, thus, the allocation of an additional 24 MHz within the 746-806 MHz band for public safety is an appropriate action.

## **II. FLEXIBLE ALLOCATION OF SPECTRUM UNDERMINES THE COMMISSION'S ABILITY TO PROMOTE COMPETITION THROUGH THE INTRODUCTION OF POLICY UNCERTAINTY**

In allocating the remaining spectrum in the 746-806 MHz band, the Commission proposes to reallocate 36 MHz of spectrum to the fixed and mobile services, and retain the

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<sup>7</sup> CTIA also agrees with the PSWAC's conclusion, however, that "no single solution will solve the telecommunications problems confronting Public Safety." PSWAC Report at 4. The use of commercial services should continue to serve as an integral component of any strategy designed to provide greater wireless communications capabilities to Public Safety agencies. See id. and In the Matter of The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, CTIA Reply Comments, filed Dec. 3, 1996.

<sup>8</sup> 47 U.S.C. § 332(a)(1)-(4).

existing broadcast allocation. The Commission tentatively concludes that possible applications for this spectrum include wireless local loop telephone services, video and multimedia applications, wireless cable, and industrial communications, in addition to expanded capacity for cellular and other land mobile services.<sup>9</sup> The Commission has stated that a broad allocation is intended to "accommodate as broad a range of services and technologies as feasible" and that it may ultimately determine that the spectrum should be licensed in any size blocks.<sup>10</sup>

In allocating additional spectrum and promoting the objectives of flexible spectrum policy, however, the Commission should not endanger the development of the band and should take into consideration its statutory spectrum management responsibilities. The level of flexibility afforded the potential user through provisions such as broad eligibility criteria, partitioning and disaggregation, and other service-related rules could adequately serve the goals of allowing market forces to shape the direction of spectrum development. In light of such regulatory options, the effective discharge of the Commission's spectrum allocation responsibilities is not necessary to achieve market driven results.

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<sup>9</sup> Notice at ¶ 13.

<sup>10</sup> Id. at ¶ 15.

Section 309(j) mandates the efficient and intensive use of the spectrum while simultaneously requiring the Commission to ensure the rapid deployment of new technologies and the ready accessibility of new and innovative technologies. These goals require the Commission to allocate additional spectrum in the applicable band to a particular use. The absence of use allocation (or allocation so broad as to constitute an absence of allocation) will cause needless uncertainty for potential bidders, financial investors, and equipment manufacturers as to the initial use of the band. This uncertainty likely will result in delay, if not complete preclusion, of the full and efficient use of the band. Such a result is both inefficient and unnecessary. At a minimum, the Commission should provide a preliminary allocation for the band and permit flexibility after the use of the band develops.

The Commission's recent application of market principles such as flexible use promote the full and efficient use of the spectrum and market-driven service offerings.<sup>11</sup> For instance, flexible use minimizes

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<sup>11</sup> See, e.g., Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-283, at ¶ 19 (released Aug. 1, 1996) ("We believe that the public interest is better served by not attempting to limit potential use of CMRS spectrum to specific applications."); see also Amendment of the Commission's Rules to Establish New personal Communications Services, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd 7700, 7712 at ¶ 23 (1993) (discussing the provision of the maximum degree of flexibility for use of the PCS spectrum as the most effective approach for meeting the Commission's "four

government intervention into the workings of the market. Additionally, flexible use policies permit mixed service offerings and changes to existing service orientation as the market dictates without the necessity of obtaining prior regulatory approval. In sum, a market-based spectrum management system quickly provides to consumers the most highly valued wireless services in the band.

Flexible use, however, is not flexible allocation. The benefits of flexible use, namely full and efficient use of the spectrum and market-driven service offerings, could be undermined by uncertainty resulting from an unduly flexible approach to initial allocation of the spectrum. A properly-defined market is necessary for market principles such as flexible use to function properly. As such, the Commission must allocate any remaining spectrum in the 746-806 MHz band to a particular service in order to define the relevant market and generate the benefits offered from following market principles.

Recent events indicate that overly flexible allocations do in fact cause confusion and, hence, inefficiencies in the marketplace. On April 25, 1997, the auction for the Wireless Communications Service ("WCS") closed after only 29 rounds of bidding. The auction raised a little more than

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objectives of universality, speed of deployment, diversity of services and competitive delivery").

one percent of its projected final net revenues.<sup>12</sup> It has been speculated that the poor results of the WCS auction can be correlated, in part, to the failure to identify a viable market for services which required the auctioned spectrum.<sup>13</sup>

Four months after the auction closed, licensees were still struggling to find viable uses for the idle spectrum. In an attempt to take even the first steps in developing a service for the spectrum, 95 of the 128 licensees met *en masse* to start narrowing down the services they may offer. The licensees themselves agreed that the problem is that "potential use of the spectrum is so flexible that manufacturers do not know what equipment to invest in and, as a result, no service can be offered."<sup>14</sup>

The fact that 30 MHz of WCS spectrum now stands idle a full five months after the licenses were auctioned instructs

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<sup>12</sup> Debra Wayne, "Paging Firms Bidding on Spectrum in Future Will Likely Pay Less," Radio Communications Report, at 17 (May 12, 1997).

<sup>13</sup> Chairman Hundt himself noted that "what happened was totally predictable. Potential bidders did not have sufficient time to analyze the market, did not have [time] to work with the equipment suppliers to develop new services." Washington Telecom News, "Hundt Defends Auction Process, Wants 12 Months to Plan New Services," May 5, 1997; see also PCS Week, "WCS Auction Ends After 29 Rounds with Revenues only a Fraction of Congressional Expectations," April 30, 1997 ("In its rush to get the auction under way, the FCC did not specify how the spectrum should be used. Given the fire sale prices, many bidders stand to realize enormous gains if a profitable business model can be built around the WCS band. However, that remains a very big 'if.'").

<sup>14</sup> Communications Today, "WCS Licensees Form Alliance to Promote Use of Idle Spectrum," Aug. 14, 1997.

that allocation of spectrum via market forces is contrary to the public interest. Fulfillment of the public interest responsibilities that Congress placed upon the Commission through Section 309(j) is a necessary prerequisite to the success of a market-based spectrum management policy. The Commission should not ignore the comments of the wireless industry<sup>15</sup> and the lessons it has already learned.<sup>16</sup>

**III. ANY SPECTRUM INTENDED FOR USE AS A COMMERCIAL MOBILE RADIO SERVICE SHOULD BE ALLOCATED AND ASSIGNED IN A COMPETITIVELY NEUTRAL MANNER**

Regardless of how the spectrum is allocated, the Commission should ensure that any spectrum intended for use as a commercial mobile radio service ("CMRS") is regulated in a competitively neutral manner. In 1993, Congress amended Section 332 of the Communications Act and changed the regulatory regime of mobile services to ensure that "services that provide equivalent mobile services are

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<sup>15</sup> Numerous parties warned of the danger that could result from reliance on market negotiations instead of on industry-developed, service-specific technical standards in the development of WCS spectrum. See In the Matter of Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), Comments of Sprint Corporation at 2, Airtouch Communications Inc. at 5; Alcatel at 2, 4; Motorola at 2.

<sup>16</sup> The Commission similarly responded to industry opposition to an open allocation policy in the General Wireless Communications Services ("GWCS") proceeding. See Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, *Second Report and Order*, 11 FCC Rcd 624, 634 at ¶ 20 (1995). Rather than heeding the cautionary warnings, the Commission engaged in a regulatory experiment which holds little promise of realizing the efficient use of the spectrum.



regulated in the same manner."<sup>17</sup> For this reason, Congress established "uniform rules" to govern CMRS offerings and directed the Commission "to review its rules and regulations to achieve regulatory parity among services that are substantially similar."<sup>18</sup>

The goal of regulatory parity dictates that licensees in the 746-806 band, if providing CMRS, should be regulated in a manner not dissimilar to the manner in which providers of substitutable services such as cellular, PCS and Specialized Mobile Radio are regulated. It follows that such licensees must be held to similar build-out requirements as other wireless carriers as well as similar competitive bidding requirements. Otherwise, like services would be regulated differently causing artificial regulatory distortions in an otherwise competitive marketplace.

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<sup>17</sup> H.R. Rep. No. 111, 103d Cong., 1st Sess. 262 (1993).

<sup>18</sup> Id.

**CONCLUSION**

For the reasons stated above, the Commission should allocate additional spectrum for public safety use. In allocating the remaining spectrum for other services, however, the Commission should not neglect its responsibilities to manage the use of the spectrum in an efficient and procompetitive manner. Finally, the Commission should ensure that any spectrum intended for use for CMRS is regulated in the same manner in which providers of substitutable services are regulated.

Respectfully submitted,



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